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July 15, 2011

Consultation Policy Comments
Department of the Interior
Room 5129 MIB
Washington, D.C. 20240

Re: Proposed Policy on Consultation with Indian Tribes
76 Fed. Reg. 28446

Dear Sir/Madam:

The Northwest Mining Association (NWMA) appreciates the opportunity to comment on the Department of the Interior (DOI) proposed Policy on Consultation with Indian Tribes. The proposed policy will apply to any DOI actions that affect tribes. Projects may fall within the scope of an action with tribal implications if they have "a substantial direct effect on tribal cultural practices, land resources, or access to traditional areas of cultural or religious importance on Federally managed lands." The proposed policy provides a new opportunity for tribes to go directly to DOI, which will only further delay the permitting process. We are concerned the proposed policy sets the stage for drawn-out consultations that will have the effect of delaying projects.

Who We Are

NWMA is a 116 year old, 2,000 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

The Proposed Policy Creates Confusion and Will Lead to Permitting Delays

The proposed policy claims to call for collaboration between DOI and Indian tribes only to the extent permitted under applicable law, and indeed many of the provisions in the proposal directly correspond to Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments." However, we feel some of the language in the proposed policy appears to go beyond what is required by applicable statutory consultation obligations by elevating the role of tribes in DOI decision making.

The policy states “consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making *where all parties share a goal of reaching a decision together*” (emphasis added). While consultation is a legitimate policy goal and is required by statute under certain circumstances, DOI cannot legally delegate or share its ultimate decision making authority.

The proposal emphasizes that consultation with tribes should promote an “enhanced form of communication,” and should “help to ensure that future Federal action is...reflective of Tribal input.” In furtherance of those goals, the policy mandates DOI training, maximization of tribal participation throughout the initiating, development and implementation phases of an action and treatment of tribes as “collaborative partners.” Additionally, where appropriate, DOI is generally instructed to undertake negotiated rulemakings, Tribal Leader Task Forces and open or single meetings with tribal leaders and officials, despite the fact that EO 13175 only calls for such actions “on issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty or other rights.”

NWMA is concerned mining projects may be unnecessarily delayed by the proposed consultation process. According to a report by the internationally respected minerals industry advisory firm Behre Dolbear, entitled 2011 Ranking of Countries for Mining Investment -- Where “*Not to Invest*,” the U.S. ranks dead last in terms of permitting time among the top 25 mining countries in the world. Consequently, the U.S. is seeing fewer investment dollars for new projects, leading to an increased dangerous reliance on foreign imports. The DOI proposed policy exacerbates this problem.

The proposal states the “Bureau or Office should work with Indian Tribes to structure a process, which to the extent feasible, considers specific Indian Tribal structures, traditional needs, and schedules of the Tribes and may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period.” We believe “a reasonable time period” needs to be better defined.

The current Native American Consultation process takes an inordinate amount of time to complete (at least six months on average, when it should take only 60-90 days) due to the fact that many line managers in the BLM believe tribes have the equivalent to veto power over their decision making. EO 13175 does not give tribes that authority. It gives the tribes the opportunity to provide meaningful input into the federal decision making process. The overall language in the proposed new policy will further confuse line managers in thinking that the tribes have a shared role in their decision making process versus meaningful consultation input.

It also is important to note that the government to government relationship of tribes and the United States does not extend to where tribes have no jurisdiction. In those cases, tribes should not be treated different than any other interest group unless there is a specific statutory requirement to the contrary.


Conclusion

Section IX (Disclaimer) states “Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a

party against the Department or any person. The Department also does not waive any applicable privilege that it may hold by virtue of this Policy.” Notwithstanding this section, we are concerned the language and processes described in the proposed policy can be used to stall important multiple-use projects.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Skaer", written in a cursive style.

Laura Skaer
Executive Director